2002

State of Utah v. Matthew Rushton : Brief of Appellee

Utah Court of Appeals

Catherine E. Lilly; Lisa J. Remal; Salt Lake Legal Defender Assoc. ; Counsel for Appellant.
Jeanne B. Inouye; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; John K. Johnson; Deputy District Attorney for Salt Lake County; Counsel for Appellee.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff/Appellee,	:	
	:	Case No. 20020154-CA
vs.	:	
MATTHEW RUSHTON, Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS FOR RECEIVING A STOLEN VEHICLE, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 41-1a-1316(2) (1998), AND FOR POSSESSION OF VEHICLE PARTS WITHOUT IDENTIFICATION NUMBER, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANNOTATED § 41-1a-1313 (1998), IN THE THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY, THE HONORABLE ROBIN W. REESE PRESIDING

JEANNE B. INOUYE (1618)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
PO BOX 140854
Salt Lake City, UT 84114-0854

JOHN K. JOHNSON
Deputy District Attorney for Salt Lake County

Counsel for Appellee

CATHERINE E. LILLY
LISA J. REMAL
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, UT 84111

Counsel for Appellant

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff/Appellee,	:	
	:	Case No. 20020154-CA
vs.	:	
MATTHEW RUSHTON, Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS FOR RECEIVING A STOLEN VEHICLE, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 41-1a-1316(2) (1998), AND FOR POSSESSION OF VEHICLE PARTS WITHOUT IDENTIFICATION NUMBER, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANNOTATED § 41-1a-1313 (1998), IN THE THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY, THE HONORABLE ROBIN W. REESE PRESIDING

JEANNE B. INOUYE (1618)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
PO BOX 140854
Salt Lake City, UT 84114-0854

JOHN K. JOHNSON
Deputy District Attorney for Salt Lake County

Counsel for Appellee

CATHERINE E. LILLY
LISA J. REMAL
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, UT 84111

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

STATE STATUTES

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff/Appellee,	:	
	:	Case No. 20020154-CA
vs.	:	
MATTHEW RUSHTON, Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF THE PROCEEDINGS

Defendant appeals from convictions for receiving a stolen vehicle, a second degree felony, in violation of Utah Code Ann. § 41-1a-1316(2) (1998), and for possession of vehicle parts without identification number, a third degree felony, in violation of Utah Code Annotated § 41-1a-1313 (1998). This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(e) (Supp. 2001).

ISSUE ON APPEAL AND STANDARD OF REVIEW

1. Did the trial court violate defendant's due process rights when it permitted police officers to testify to telephone statements given them, during their investigation of the crime, by an individual who identified himself as defendant? Specifically, should the court have assessed the reliability of any voice identification in this case under the state constitutional standard for analyzing the

reliability of eyewitness identification and should the court have concluded that any voice identification testimony was insufficiently reliable to present to the jury?

Standard: "Due process challenges are questions of law that [this Court] review[s] applying a correction of error standard." *West Valley City v. Roberts*, 1999 UT App. 358, ¶ 6, 993 P.2d 252.

2. Did the trial court err when it determined that defendant's telephone statements to the investigating officers met the authentication of evidence requirements of rule 901, Utah Rules of Evidence?

Standard: This Court applies an abuse of discretion standard when reviewing a trial court determination that the evidence conformed with the requirements of the rule. *See State v. Silva*, 2000 UT App 292, ¶ 11, 13 P.3d 604.

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following relevant rule is included in Addendum A:

Utah R. Evid. 901.

STATEMENT OF THE CASE

Defendant was charged by information with receiving a stolen vehicle, a second degree felony, in violation of Utah Code Ann. § 41-1a-1316(2) (1998), and with possession of vehicle parts without identification number, a third degree felony, in violation of Utah Code Annotated § 41-1a-1313 (1998). R. 2-3.

Prior to trial defendant filed a "motion to suppress defendant's alleged statements." R. 28-29. Defendant argued that the State could not establish that he

was the person who telelphoned the police during their investigation of the offense and made the statements. *Id.* Therefore, he argued, the evidence lacked foundation. *Id.* A hearing was held. R. 166. Defendant again argued that the State had provided an inadequate foundation for admission, claiming the State had failed to meet the authentication requirements of rule 901, Utah Rules of Evidence. R. 166:32-36. The trial court denied the motion to suppress. *Id.* at 36.

Defendant was tried before a jury and found guilty on both counts. R. 168:265, 266. Defendant was sentenced to a 240-day jail term and placed on probation for three years. R. 129, 147. Defendant timely appealed. R. 149.

STATEMENT OF THE FACTS

Nathan Christensen parked his white jeep outside his apartment on March 30, 1999. R. 167:25. A red trailer with his work tools was attached to the jeep. *Id.* at 23. Sometime during the night the jeep and trailer disappeared. *Id.* at 25.

The following day Officer Julie Jorgensen of the West Valley City Police Department saw and followed a vehicle matching the description of the stolen jeep. *Id.* at 170-171. When the vehicle entered a cul-de-sac, she waited for it to emerge. *Id.* at 171. When it did not, she entered the cul-de-sac and found that the driver had abandoned the vehicle and fled on foot. *Id.* at 172. The vehicle had license plates belonging to a yellow jeep owned by Julie and Clayton Arnold. *Id.* at 173.

Officer Jorgensen sent a second officer to the Arnold home where he located the missing trailer. *Id.* at 174. Officer Jorgensen spoke to Julie Arnold, Clayton

Arnold's mother, who told Officer Jorgensen that defendant and her son had been working on the white jeep when she had returned home from work. *Id.* at 175-176. The officers tried unsuccessfully to locate defendant and Clayton Arnold that night. *Id.* at 176.

Deputy Ben Blackmer of the Salt Lake County Sheriff's Department and Detective Holly Wright of the West Valley City Police Department investigated. *Id.* at 145, 190. They went together to the home of defendant's parents where each officer left a business card and asked defendant's parents to have defendant call when he returned. *Id.* at 149, 192. Each card listed the phone number for a direct line to the officer's desk, a number not available to the general public. *Id.* at 150, 192. Calls not placed via the direct lines had to go through receptionists. R. 166:1-11, 20.

The officers then went to the Arnold residence, where they interviewed Clayton Arnold. R. 167:150, 193-194. Arnold told them that defendant had brought the white jeep to his home. Arnold said that he had ridden in the white jeep, knowing it was stolen, but that he did not steel the jeep, remove its decals, alter its VIN, or change its license plates. *See id.* at 81-83, 92, 112-120, 151. The officers, still trying to reach defendant, also left business cards with Clayton Arnold and asked him to have defendant call them. *Id.* at 151, 208.

Deputy Blackmer then went to visit with Julie Arnold at her place of employment. *Id.* at 151. During this conversation, Ms. Arnold told him that defendant had a distinctive nervous giggle. *Id.* at 168.

Sometime after 5:00 p.m. that day, Detective Wright received a telephone call on her direct line from an individual who identified himself as defendant. *Id.* at 199. He indicated that he knew the police were looking for him "because of the Jeep," but that he was unwilling to come in because he knew that he would be jailed on an outstanding warrant. *Id.* The caller had an habitual nervous laugh. *Id.* at 200. The caller stated that he knew the jeep was stolen, but that he did not steal it. *Id.* at 201. He said that he "got it from a guy who wanted to get rid of it." *Id.* He also stated that "Clayton [Arnold] didn't have any part in it." *Id.* at 202. Detective Wright asked the caller to contact Deputy Blackmer, hoping that Deputy Blackmer "could talk him into coming in and talking about it." *Id.* The caller agreed to phone Deputy Blackmer. *Id.*

Deputy Blackmer also received a call that afternoon from an individual who identified himself as defendant. *Id.* at 153. The caller exhibited a nervous laugh that punctuated approximately every second or third sentence. *Id.* at 154. The caller refused to come in because he did not want to be arrested. *Id.* at 153. The caller admitted knowing the jeep was stolen, but denied having stolen it. *Id.* at 155.

SUMMARY OF THE ARGUMENT

The state constitutional standard for analyzing the reliability of eyewitness identification has no application to the facts of this case. The trial court properly admitted the inculpatory statements, made to police by a caller who identified himself as defendant, without conducting a *Ramirez*-type reliability analysis. First, police officers did not identify the caller. Second, nothing suggests that the reliability concerns associated with eyewitness testimony are relevant to voice identification testimony. Defendant has presented no scientific evidence, similar to that which undergirds the *Ramirez* standard for eyewitness identification reliability, for questioning the reliability of voice identification. Finally, the witnesses in this case were not crime victims identifying a perpetrator seen or heard during the commission of a crime. Rather, the witnesses were police officers reporting the information gathered during an investigation.

The statements were properly subject to the authentication requirements of Rule 901, Utah Rules of Evidence. The trial court did not abuse its discretion in admitting the statements where the caller identified himself as defendant, defendant was known to have a nervous laugh, the caller exhibited a nervous laugh, and the calls apparently came in response to police requests to have defendant call them.

ARGUMENT

I.

THE STATE CONSTITUTIONAL STANDARD FOR ANALYZING THE RELIABILITY OF EYEWITNESS IDENTIFICATION HAS NO APPLICATION TO THE FACTS OF THIS CASE

Defendant argues that the testimony of police officers regarding the telephone caller and his statements should have been subject to a reliability analysis akin to that mandated by *State v. Ramirez*, 817 P.2d 774 (Utah 1991), for eyewitness identifications. Br. Aplt. at 16-25. That argument is not supported by the facts, holding, or policy considerations at stake in *Ramirez*.

Ramirez involved the questionable identification of a suspect by a witness who had seen the masked perpetrator for only a moment and only at a considerable distance and who had identified the suspect only after police presented him handcuffed to a chain link fence at one o'clock in the morning, illuminated by police car headlights and spotlights, and attended by numerous police officers. When the identification testimony was challenged on appeal, the Utah Supreme Court laid out the analysis for assessing the admissibility of eyewitness identification testimony. Referencing its own decision in *State v. Long*, 721 P.2d 483, 488 (Utah 1986), which noted the virtually undisputed scientific research documenting the unreliability of eyewitness testimony, the Court held that a defendant is entitled to a determination of the constitutional reliability of eyewitness identification testimony before it is presented to the jury. *Ramirez*, 817 P.2d at 778.

The court further indicated that the constitutional reliability of eyewitness identification testimony was to be determined "under the totality of the circumstances," after considering the following pertinent factors:

> (1) [t]he opportunity of the witness to view the actor during the event; (2) the witness's degree of attention to the actor at the time of the event; (3) the witness's capacity to observe the event, including his or her physical and mental acuity; (4) whether the witness's identification was made spontaneously and remained consistent thereafter, or whether it was the product of suggestion; and (5) the nature of the event being observed and the likelihood that the witness would perceive, remember and relate it correctly. This last area includes such factors as whether the event was an ordinary one in the mind of the observer during the time it was observed, and whether the race of the actor was the same as the observer's.

Id. at 781.[1]

Unlike *Ramirez*, the instant case involves no identification. Further, even if the case presented a voice identification issue, no cases or studies suggest that the scientific basis for questioning the reliability of eyewitness identification has anything at all to do with voice identification. Further, the witnesses in this case were not crime victims identifying a perpetrator seen or heard during a crime, but police officers reporting information received during their investigation of a crime. Many, if not most, of the factors pertinent to victim-witness identifications are not relevant to police information-gathering.

---

[1]Applying this analysis, the Supreme Court determined that the eyewitness testimony identifying Ramirez as the perpetrator was legally sufficient "to warrant a preliminary finding of reliability and, therefore, admissibility." *Ramirez*, 817 P.2d at 784.

A. Defendant did not raise this claim below and has not argued "plain error" or "exceptional circumstances" on appeal; this Court should therefore decline to address the claim.

Defendant did not claim below that the trial court should have applied a *Ramirez*-type analysis to voice identifications by investigating officers. Rather, he filed a motion to suppress, arguing that the State "[could not] lay an adequate foundation for the admission into evidence" of statements made by a telephone caller who identified himself as defendant. R. 28-29. In a hearing on the motion, defense counsel argued the application of Rule 901, Utah Rules of Evidence, which states that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Utah R. Evid. 901(a). Defendant did not argue that admission of the evidence violated his due process rights or that he was entitled to a "more searching reliability analysis." Br. Aplt. at 2. Defendant therefore failed to preserve his claim that the trial court should have conducted a *Ramirez*-type analysis of the reliability of any voice identification. *See State v. Bryant*, 965 P.2d 539, 546 (Utah App. 1998) ("Trial counsel must state clearly and specifically all grounds for objection" and "[t]he objection must be specific enough to give the trial court notice of the very error of which [defendant] complains") (internal quotation marks and citations omitted).

Further, defendant does not argue "plain error" or "exceptional circumstances" on appeal. This court should therefore decline to consider this claim.[2] *See State v. Pledger*, 896 P.2d 1226, 1229 n. 5 (Utah 1995).

B. The trial court did not err when it admitted statements allegedly made by defendant in calls to police officers without applying a *Ramirez*-type analysis.

Even if defendant's claim were properly before this court, defendant could not prevail. A *Ramirez-type* analysis is not applicable to the facts of this case.

1. A *Ramirez*-type analysis, applicable to eyewitness identifications, is not applicable in this case because no identification occurred.

Eyewitness identification is the identification of an individual based on having seen that person in another context. Most frequently in criminal cases, it involves identifying a person in a courtroom, in a lineup or showup, or in a photo spread based on having seen that person during the commission of a crime. *See State v. Hollen*, 2002 UT 35, 44 P.3d 794 (photo array, lineup, trial); *State v. Maestas*, 1999 UT 32, 984 P.2d 376 (showup, lineup, trial); *Ramirez*, 817 P.2d at 774; *Long*, 721 P.2d at 483. Voice identification is "[i]dentification of a voice . . . by opinion

---

[2]Further, defendant could not have prevailed on a "plain error" argument. "[A] trial court's error is not plain where there is no settled appellate law to guide the trial court." *State v. Ross*, 951 P.2d 236, 239 (Utah App. 1997). Defendant cites only one Utah case addressing the constitutional reliability of voice identifications, *State v. Silva*, 2000 UT App 292, ¶ 18, 13 P.3d 604, where this Court held that identification of a recorded voice does not require the same reliability analysis as eyewitness identification testimony. *See id.* at ¶ 19 n.2. *Silva* presents no obvious precedent for defendant's argument; in fact, defendant attempts to distinguish *Silva* in making his argument.

based upon hearing the voice at any time under circumstances connecting it with the alleged speaker." *See* Rule 901(5), Utah R. Evid..

Defendant apparently claims that officers Wright and Blackmer identified him as the caller who told them he knew the jeep was stolen. R. 167:155, 200-201. Defendant misconstrues the facts. No voice identification occurred.

Both officers testified that they left their business cards with defendant's friends and/or relatives and asked them to have defendant call. *Id.* at 149, 151, 192, 197, 208. Both testified that later that day they received calls from a party who identified himself as defendant. *Id.* at 153, 199. Both stated that they did not know defendant and had not had any other conversation with him. *Id.* at 155-156, 209. While both believed that defendant was the caller, neither identified defendant as the caller. *See id.* at 153-156, 198-203. Rather, they testified to the content of the telephone conversation and to the reasons they believed that defendant was the caller. *See id.* The witnesses did not hear a voice and identify it as defendant's voice based upon hearing his voice at any other time. No voice identification occurred. Therefore, the analysis for determining the constitutional reliability of eyewitness identifications, even assuming its relevance to voice identifications, is not applicable in this case.

2. Defendant has presented no scientific basis for extending the state constitutional standards governing the admissibility of eyewitness identification testimony to the admissibility of voice identification testimony.

The Supreme Court clearly mandated the *Ramirez* analytical model in response to a body of scientific research expressly applicable to eyewitness identifications. *Ramirez*, 817 P.2d at 779-780. The Court cited to *State v. Long*, 721 P.2d 483 (Utah 1986), where it had referenced the voluminous scientific research documenting the questionable reliability of some eyewitness testimony, including studies demonstrating "the fallibility of eyewitness testimony," the lack of juror appreciation for this fallibility, and the great weight that jurors give to eyewitness testimony.[3] *See id.* at 488-492.

Defendant apparently asserts that voice recognition testimony is sufficiently analogous to eyewitness identification to mandate the same constitutional test for reliability. In urging this expansion, however, defendant fails to cite any cases or studies documenting that the scientific basis for questioning the reliability of eyewitness identification has anything at all to do with voice recognition, much less that the two are so closely allied as to require identical scrutiny. Absent such studies, no basis exists for extending the state constitutional standards governing the

---

[3]*Long* involved the refusal of a trial court to give a cautionary instruction concerning the reliability of eyewitness identification. In *Long*, "[t]he State's case hinged on the uncorroborated eyewitness testimony of a single witness—the victim of the crime" and "[t]he circumstances surrounding his identification raised grave concerns about its reliability." 721 P.2d at 487.

admissibility of eyewitness identification testimony to the admissibility of voice identification testimony.

This Court has previous addressed the fundamental difference between eyewitness identification evidence and voice identification evidence. In *State v. Silva*, this Court rejected a defendant's argument that the constitutional test for eyewitness identification reliability should apply to the identification of a recorded voice. 2000 UT App 292, 13 P.3d 604. Observing that "virtually all testimony involves perception and memory," the court noted two reasons that "[d]ue process requires that courts scrutinize the admissibility of eyewitness testimony more stringently than the admission of other testimony." *Id.* at ¶ 19 n.2. "[F]irst, scientific literature is replete with empirical studies documenting the unreliability of eyewitness identification, and second, jurors do not appreciate the fallibility of eyewitness testimony [and] they give such testimony great weight." *Id.* (internal quotation marks and citations omitted). This Court determined that those factors did not exist with respect to the voice identification evidence at issue.

Likewise, those factors do not exist with respect to any voice identification testimony presented here.

3. Any voice identification testimony in this case does not involve the reliability concerns inherent in eyewitness identification and does not require the same constitutional test for reliability.

Even if the issue were preserved and even if the police officers had identified defendant's voice, this case would not involve the reliability concerns inherent in

eyewitness identification and would not require a *Ramirez*-type reliability analysis. The typical eyewitness identification requiring a *Ramirez* analysis involves a crime victim identifying a stranger. Scientific evidence has demonstrated that the stress and fear attendant to such a situation can negatively affect the witness's ability to perceive and remember. *See Long*, 721 P.2d at 489. The witness's opportunity to view is often limited by the hurry associated with much criminal activity, by lack of lighting, and by the perpetrator's use of disguises. *See id.* at 488-489. The criminal act usually comes as a surprise to the witness and requires the witness to identify the perpetrator with little preparation time. Further, identification often involves the use of lineups, showups, and photo spreads, which can permit the use of suggestion to influence the witness-identifier. *See id.* at 490.

Here, the witnesses testifying were not crime victims reporting what they saw during the commission of a crime. Rather, they were police officers testifying about what they learned while investigating a crime. Defendant has pointed to no precedent requiring a *Ramirez-type* reliability analysis of police officer identification of persons with whom they interact while conducting an investigation. Nor would that analysis seem reasonable even in the context of eyewitness identifications. For instance, Utah precedent does not suggest that a police officer's in-court identification of a defendant as the person who confessed to a crime should be subject to a *Ramirez* reliability analysis. Neither should an officer's identification of a defendant as the person who gave certain telephone statements

during an investigation be subject to that analysis. The reliability concerns associated with a victim-witness's identification are not ordinarily present when an investigator identifies his sources.[4]

II.

THE TRIAL COURT PROPERLY DETERMINED THAT DEFENDANT'S TELEPHONE STATEMENTS TO INVESTIGATING OFFICERS MET THE AUTHENTICATION OF EVIDENCE REQUIREMENTS OF RULE 901, UTAH RULES OF EVIDENCE

Defendant next argues that the telephone call alleged to come from defendant to the investigating officers was not properly authenticated. Br. Aplt. at 25-30. Defendant argues that the caller's self-identification and his exhibition of a nervous laugh were insufficient to meet the requirements of Rule 901, Utah Rules of Evidence. Defendant's argument fails. The self-identification and the nervous laugh, *together with* the context in which the calls were made, provided sufficient evidence to meet the requirements of the rule.

Authentication is, in essence, a relevancy issue. The relevancy of a writing, some other piece of evidence, or a telephone conversation is "logically dependent upon the existence of some connection between that [evidence] and a particular individual." 2 John William Strong, *McCormick on Evidence* § 218 (4th ed. 1992).

---

[4]Defendant refers to dicta in *Silva* suggesting that "a situation may arise when a person witnesses a crime but only hears the perpetrator's voice. If this witness later identifies someone based solely upon his or her recollection of the perpetrator's voice, that defendant may be entitled to a reliability analysis akin to that used for eyewitness testimony." 2000 UT App 292, ¶ 18 n.1. This statement is only dicta and, in any case, details a situation distinguishable from the instant case.

"The real question, however, is not whether such a connection is logically necessary for relevancy, but rather what standards are to be applied in determining whether the connection has been made to appear." *Id.*

The standards are minimal. *See* 3 Stephen A. Saltzburg et al., *Federal Rules of Evidence Manual* 1988 (7th ed. 1998) ("The requirements for authenticating evidence are not burdensome"). The proponent of the evidence need only make a prima facie showing that the evidence is what its proponent claims it to be. Utah R. Evid. 901(a); *see also* 5 Joseph M. McLaughlin et al., *Weinstein's Federal Evidence* § 901.02[3] (2d. ed. 2002). In other words, the proponent must introduce sufficient evidence to support a reasonable juror's conclusion that the evidence is what it purports to be. *Id.* at n.23 & cases cited therein. The proponent need not prove beyond reasonable doubt that the evidence is what it purports to be, and he need not rule out all possibilities inconsistent with authenticity. *See United States v. Holmquist*, 36 F.3d 154, 168 (1st Cir. 1994). Once the proponent has met this standard, the trial court should admit the evidence. Inconsistencies or flaws in the authentication "go to the weight of the evidence instead of its admissibility," and become issues for jury determination. *See* McLaughlin, § 901.02[3] n.25 and cases cited therein.

In sum, rule 901 "does not require absolute certainty or conclusive proof." *State v. Mays*, 729 A.2d 1074, 1079 (N.J. Super. 1999). If a prima facie showing is

made, the evidence comes in "and the ultimate question of authenticity is left to the jury." 2 John William Strong, *McCormick on Evidence* § 227 (4th ed. 1992).

Rule 901 applies to telephone conversations. Like writings, they must be authenticated. Rule 901 presents ten examples of acceptable means for proving the authenticity or identification. The ten examples are "[b]y way of illustration only, and not be way of limitation." Utah R. Evid. 901(b). Direct evidence of the identity of a caller through recognition of the caller's voice, one of the ten examples, is one method of authentication. *See* Utah R. Evid. 901(b)(5). Circumstantial evidence of the identity of the caller, however, may also suffice. *See* Utah R. Evid. 901(b)(4); *see also* McLaughlin at § 901.03[8] ("proof of authenticity may consist entirely of circumstantial evidence; no direct evidence is required").

One method of authenticating evidence, frequently used with documents but also applicable to telephone conversations, is the reply technique (also called the "reply doctrine"). "A telephone call can be authenticated with or without the identification of the speakers or the source of the call if it is in reply to a previous communication. . . . The previous communication can be a letter, telephone call, or any other transmission that can be authenticated." 5 Jack B. Weinstein and Margaret A. Berger, *Weinstein's Evidence* ¶ 901(b)(6)[02] (1994); *see also Mays*, 729 A.2d at 1079 ("even though the recipient of a telephone call cannot identify the voice of the caller, he may still authenticate the telephone call by establishing that it was received in response to his request"); *State v. Lynes*, 401 N.E.2d 405, 407

(N.Y. 1980) (call properly authenticated where received by detective from defendant shortly after he had left word for defendant to call him).

In this case, the evidence, including evidence that the challenged telephone statements came in reply to previous police communications, supports the trial court's authentication ruling. First, the caller identified himself as defendant. While self-identification alone is usually insufficient to meet the requirements of rule 901, it is a factor to be considered. Next, the caller exhibited a nervous laugh. While the exhibition of a nervous laugh alone may be insufficient to meet the requirements of the rule, it too is a factor to be considered—a distinctive characteristic. *See* Utah R. Evid. 901(b)(4). But these factors, *together with* the circumstances under which the phone call was received—by the two officers on their direct lines shortly after they left messages for defendant to call them, suffice. They are "sufficient to support a finding that the matter in question [the phone statements] are what [the] proponent claims [statements from defendant]." Utah R. Evid. 901(a).[5]

---

[5]While not referring the "reply doctrine," the trial judge clearly considered its application to the authentication issue. Explaining his reasons for denying the motion to suppress the telephone statements, he said:

> I'm going to deny the motion on a couple of grounds. There—the distinctive laugh or the nervous laugh is hardly enough in and of itself to identify the caller as [defendant], but I guess what's more persuasive to me is that the officers left their telephone number, their direct numbers with Mr. Clayton Arnold *and directed him to ask [defendant] to get in touch with them and later on, apparently that same day, someone representing himself to be [defendant] did.* That would be sufficient, at least, to meet the

Defendant argues that Clayton Arnold may have called the detectives and identified himself as defendant. Defendant argues that Arnold had both the opportunity (because he had been given the numbers to the officers' direct lines) and motive (because he wanted to shift blame from himself). Br. Aplt. at 24-25, 29. The State, however, was not required to rule out all other possible sources for the telephone statements. Once it had established a basis upon which a reasonable juror could have found that the phone calls came from defendant, evidence suggesting other possible sources for the calls was a matter for jury consideration. The possibility that someone else could have made the call was relevant to the weight to be given the evidence, not to its admissibility.

In sum, rule 901 required the State to provide evidence from which a reasonable juror could find that the telephone statements in this case were made by defendant. The rule does not require that the evidence be conclusive. The State introduced evidence showing that the caller identified himself as defendant, that the caller had a nervous laugh, and that defendant had a nervous laugh. Further, the State showed that the calls were received on the investigators' direct and non-public phone lines shortly after they left their numbers with defendant's family and

---

> threshold to let the trier of fact then decide whether or not the caller was [defendant] or whether someone else called and used his name.

R. 166:36 (emphasis added).

friends, asking that he contact them. This evidence sufficed to authenticate the statements.

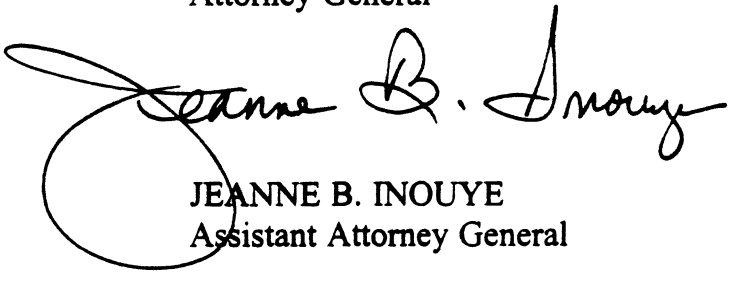
Finally, even had the judge erred in admitting the telephone statements, the error would be harmless. The State presented uncontroverted evidence from Julie Arnold and Clayton Arnold that defendant brought the white jeep to their home and began removing decals from it. R. 167:44-46, 80. He told one of them that his father had purchased it for him and the other that he was buying it himself. *Id.* at 46, 93. In light of this evidence, there is no "reasonable likelihood" that admission of the telephone statements affected the outcome of the proceedings. *State v. Knight*, 734 P.2d 913, 920 (Utah 1987). If error occurred, it was harmless.

CONCLUSION

Defendant's conviction should be affirmed.

RESPECTFULLY submitted on September 19, 2002.

MARK L. SHURTLEFF
Attorney General



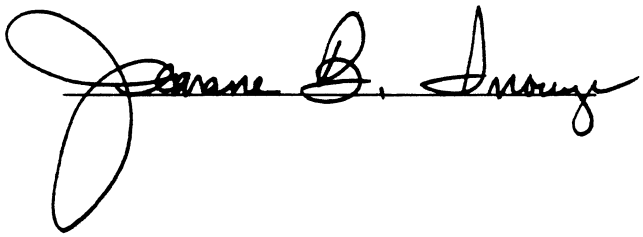
JEANNE B. INOUYE
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that two copies of the foregoing Brief of Appellee were either mailed, postage prepaid, or hand-delivered this 19th day of September, 2002, to the following:

CATHERINE E. LILLY
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, UT 84111

Counsel for Appellant



Addendum A

Rule 901. Requirement of authentication or identification.

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods provided by statute or rule. Any method of authentication or identification provided by court rule or statute of this state.

ADVISORY COMMITTEE NOTE

Subdivision (b)(2) is in accord with State v. Freshwater, 30 Utah 442, 85 Pac. 447 (1906). Subdivision (b)(8) is comparable with Rule 67, Utah Rules of Evidence (1971), except that the former rule imposed a 30-year requirement. Subdivision (b)(10) is an adaptation of subdivision (10) in the comparable federal rules to conform to state practice.

Addendum A

Not Reported in P 2d
(Cite as: 1998 WL 1758314 (Utah App.))

Court of Appeals of Utah.

MURRAY CITY, Plaintiff and Appellee,
v.
Roderick CULLEY, Defendant and Appellant.

No. 971672-CA.

Nov. 27, 1998.

D Gilbert Athay and Michael R. Sikora, Salt Lake City, for appellant.

G.L. Critchfield, Murray, for appellee.

Before BENCH, GARFF, [FN1] and GREENWOOD, JJ.

FN1. Senior Judge Regnal W. Garff sitting by special appointment pursuant to Utah Code Ann. 78-2-4(2)(1995); Utah Code Jud. Admin. R3- 108(4).

MEMORANDUM DECISION

GREENWOOD.

*1 Defendant Roderick Culley appeals his conviction of violating a protective order in violation of Utah Code Ann 76-5-108(1) (Supp.1998) on the grounds of insufficiency of the evidence. We affirm.

When a defendant challenges a conviction based upon sufficiency of the evidence, we review the " 'evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict.' " We reverse only when the evidence " 'is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he [or she] was convicted' " *State v Johnson*, 821 P 2d 1150, 1156 (Utah 1992) (alteration in original) (citation omitted)

Utah Code Ann. section 76-5-108(1) provides that "[a]ny defendant subject to a protective order who *intentionally violates that order after having been properly served*, is guilty of a class A misdemeanor " Utah Code Ann. 76-5-108(1) (Supp 1998) (emphasis added). Defendant argues that service is an element that must be proven beyond a reasonable doubt in order to convict him of this offense and that because he was not properly served, the evidence was insufficient to convict him. We disagree.

Utah Code Ann. 76-1-501(2) (1995) defines "element of the offense" as "(a) [t]he conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; [and] (b) the culpable mental state required." Applying basic rules of statutory construction, service is not an element of the crime when sections 76-5- 108(1) and 76-1-501(2) are "construed in a harmonious fashion." *State v. Souza*, 846 P 2d 1313, 1317 (Utah Ct.App.1993) (citation omitted). Also, because it is unclear whether section 76-5-108(1) requires service for conviction of the crime, we must look to other sections of the Criminal Code to interpret the meaning of that section. *See Clover v Snowbird Ski Resort*, 808 P.2d 1037, 1045 (Utah 1991) (citation omitted) (holding " '[i]f there is doubt or uncertainty as to the meaning or application of the provisions of an act, it is appropriate to analyze the act in its entirety, in light of its objective, and to harmonize its provisions in accordance with its intent and purpose' "). Therefore, although section 76-5-108(1) mentions proper service, this section, when read in conjunction with the specific definition of the elements of an offense under section 76-1-501(2), does not include service as an element of the crime. *See State v. Bishop*, 753 P 2d 439, 468 (Utah 1988) (holding court's "primary responsibility" is to "give effect to the legislature's intent, even if our interpretation appears at odds with conventional usage or literal construction of the statutory language ") Moreover, we believe service of process is relevant only to the culpable mental state required, as well as to basic principles of due process and fairness Section 76-5-108(1) requires the State to prove a defendant "intentionally" violated a protective order. Proper service of a protective order probably establishes the requisite mens rea of intentionality, but it is not the only means of doing so, as demonstrated in this case

*2 Even assuming arguendo that service is required under the statute, defendant effectively waived this requirement. Waiver is defined as "the relinquishment of some claim, right, privilege, or of the opportunity

to take advantage of some defect, irregularity, or wrong." *Black's Law Dictionary* 1092 (6th ed.1991). Here, defendant's presence at the hearing on the protective order, stipulation to entry of the order, and admission at trial that he was aware of the terms of the protective order, together constitute an "implied relinquishment of [his] legal right" to service of process. *See id.*

The purpose of the service requirement in section 76-5-108(1) is to provide notice to a defendant subject to a protective order of the prohibited conduct. However, where, as here, defendant received notice of the contents of the protective order by his presence at the hearing or through other channels, service is unnecessary.[FN2] A similar conclusion was reached in *Small v. State*, in which the Texas Court of Appeals held that service is not the only manner in which a defendant may obtain notice of a protective order against him. *See id.* 809 S.W.2d 253, 256-57 (Tex.Ct.App.1991). Rather, the State may establish that a defendant was aware of a protective order in many ways, one of which is that the defendant "agreed to a protective order, *attended any hearing* or in any way participated" such that he received notice, formal or informal, of the order. *Id.* (emphasis added). Similarly, in *Ramos v. State*, that same court upheld the conviction of a defendant for violating a protective order because the evidence established that "appellant had knowledge of the existence of the court order or was at least aware of it before he committed the offensive act," despite the fact that defendant was "never served with or given the opportunity to read the protective order." 923 S.W.2d 196, 197-98 (Tex.Ct.App.1996).[FN3] *Cf. In re S.A.C.*, 498 N.E.2d 285, 287 (Ill.Ct.App.1986) (holding defendant not deprived of due process rights if present at hearing, represented by counsel, and given fair opportunity to object to issuance of order). These cases support the State's contention that as long as a defendant who is subject to a protective order receives notice, either formally or informally, of the prohibited conduct, he may be convicted of violating that order. Thus, because defendant in this case received notice of the protective order through his presence and participation at the hearing, he effectively waived his right to service.

FN2. In *State v. Rudolph*, the Utah Supreme Court held "that an actor must have been 'properly served' with the protective order before he or she can be convicted of violating Utah Code Ann. 76-5-108." 349 Utah Adv.Rep. 11, 17 (Utah 1998). However, the court found that it was proper to charge defendant with violating an ex parte order *or* a permanent protective order when defendant was served with the ex parte order and had notice of the hearing on the permanent protective order but had not been served with it. *See id.*

FN3. Texas Penal Code Ann. 25.07(a)(2) (Vernon Supp.1998) provides that a person violates a protective order if he knowingly or intentionally "communicates directly with a ... member of the family or household in a threatening or harassing manner...." Although this statute does not require that defendant be properly served with the protective order, Texas courts have held that for a defendant to be guilty of violating a protective order, he must be given notice of the protective order. *See Ramos*, 923 S.W.2d at 198 (Tex.Ct.App.1991).

CONCLUSION

Because there was sufficient evidence presented at trial to support defendant's conviction, we reject defendant's challenge of insufficient evidence and affirm defendant's conviction of violation of a protective order.

GARFF, Judge, concur.

BENCH, Judge, concur in the result.

1998 WL 1758314 (Utah App.)

END OF DOCUMENT

Addendum B

76-5-108. Protective orders restraining abuse of another -- Violation.

(1) Any person who is the respondent or defendant subject to a protective order or ex parte protective order issued under Title 30, Chapter 6, Cohabitant Abuse Act, or Title 78, Chapter 3a, Juvenile Court Act of 1996, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or a foreign protective order as described in Section **30-6-12**, who intentionally or knowingly violates that order after having been properly served, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(2) Violation of an order as described in Subsection (1) is a domestic violence offense under Section **77-36-1** and subject to increased penalties in accordance with Section **77-36-1.1**.

Amended by Chapter 246, 1999 General Session
Download Code Section Zipped WP 6/7/8 76_05018.ZIP 2,285 Bytes

Sections in this Chapter|Chapters in this Title|All Titles|Legislative Home Page

Last revised: Tuesday, August 06, 2002

Addendum C

JOANNA B. SAGERS, #5632
ROBIN L. RAVERT, #7964
LEGAL AID SOCIETY OF SALT LAKE
ATTORNEY FOR PETITIONER
225 SOUTH 200 EAST, SUITE 200
SALT LAKE CITY, UTAH 84111
TELEPHONE: (801) 328-8849

FILED
MAY 25 1999

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

JOLYNNE THOMAS,

Petitioner,

vs.

LAVAR T. JENSEN,

Respondent.

PROTECTIVE ORDER

Civil No. 994902937CA

Judge Frank G. Noel
Comm Lisa A. Jones

This matter came for hearing on May 25, 1999, before the undersigned. The following parties were in attendance:

☒ Petitioner ☒ Petitioner's attorney Robin Ravert Joanna B. Sagers

☒ Respondent ☐ Respondent's attorney _____

The Court having reviewed Petitioner's Verified Petition for Protective Order and:

___ having received argument and evidence,

X having accepted the stipulation of the parties

___ having entered the default of the Respondent for failure to appear

and it appearing that domestic violence or abuse has occurred,

IT IS HEREBY ORDERED:
(The Judge or Commissioner shall initial each section that is included in this Order.)

X 1. The Respondent is restrained from attempting, committing, or threatening to commit abuse or domestic violence against Petitioner.

____ 2. The Respondent is restrained from attempting, committing, or threatening to commit abuse or domestic violence against the following minor children and members of Petitioner's family or household:

X 3. The Respondent is prohibited from directly or indirectly contacting, harassing, telephoning, or otherwise communicating with the Petitioner.

X 4. The Respondent shall be removed and excluded, and shall stay away, from Petitioner's residence, and its premises, located at: **4924 South Holladay Blvd., Holladay, Utah 84117**, and Respondent is prohibited from terminating or interfering with the utility services to the residence.

X 5. The Respondent is ordered to stay away from the school, place of employment, and/or other places, and their premises, frequented by Petitioner, the minor children and the designated household and family members. These places are identified by the following addresses: **Novus Services, 8475 South Sandy Parkway, Sandy, Utah; 272 East 8000 South, Sandy, Utah (Petitioner's son); 4561 Dixie Ann Drive, West Valley City, Utah 84121 (Petitioner's sister); and, 6835 South Vista Grande Drive, Holladay, Utah (Petitioner's sister)**.

____ 6. The Court having found that Respondent's use or possession of a weapon may pose a serious threat of harm to Petitioner, the Respondent is prohibited from purchasing, using, or possessing a firearm and/or the following weapon(s):

____ 7. The Petitioner is awarded possession of the following residence, automobile and/or other essential personal effects:
This award is subject to orders concerning the listed property in future domestic proceedings.

____ 8. An officer from the following law enforcement agency: **Salt Lake County Sheriff** shall accompany Petitioner to ensure that Petitioner safely regains possession of the awarded property.

____ 9. An officer from the same law enforcement agency shall facilitate Respondent's removal of Respondent's essential personal belongings from the parties' residence. The law enforcement officer shall contact Petitioner to make these arrangements. Respondent may not contact the Petitioner or enter the residence to obtain any items.

____ 10. The Respondent is placed under the supervision of the Department of Corrections for the purposes of electronic monitoring. Within 24 hours of the execution of this Order, the Department of Corrections shall place an electronic monitoring device on Respondent and shall install monitoring equipment on the premises of Petitioner and in the residence of Respondent. Respondent is ordered to pay to the Department of Corrections the costs

of the electronic monitoring required by this Order. The Department of Corrections shall have access to Petitioner's residence to install the appropriate monitoring equipment.

RESPONDENT'S VIOLATION OF PROVISIONS "1" THROUGH "10" MAY BE A CLASS A MISDEMEANOR.

Petitioner is granted the following temporary relief (provisions "a" through "l") which will (expire/be reviewed by the court) 150 days from the date of this order:

_____ a. The Petitioner is granted custody of the following minor children:

_____ b. Visitation shall be as follows:

_____ c. The Respondent is restrained from using drugs and/or alcohol prior to or during visitation.

_____ d. The Respondent is restrained from removing the parties' minor child/ren from the state of Utah.

_____ e. The Respondent is ordered to pay child support to the Petitioner in the amount of $ pursuant to the Utah Uniform Child Support Guidelines.

_____ f. The Respondent is ordered to participate in mandatory income withholding pursuant to Utah Code Annotated § 62A-11, Parts 4 and 5.

_____ g. The Respondent is ordered to pay one-half of the minor child/ren's day care expenses.

_____ h. The Respondent is ordered to pay one-half of the minor child/ren's medical expenses including premiums, deductibles and co-payments.

_____ I. The Respondent is ordered to pay Petitioner spousal support in the amount of $.

_____ j. The Respondent is ordered to pay Petitioner's medical expenses, suffered as a result of the abuse in the amount of $_____.

_____ k. The Respondent is ordered to pay the minor child/ren's medical expenses, suffered as a result of the abuse in the amount of $_____.

_____ l. Other: _____

_____

_____

Violation of provisions "a" through "l" may subject Respondent to contempt proceedings.

____ 11. The Division of Child and Family Services is ordered to conduct an investigation into the allegation of child abuse.

____ 12. Other: _____

_____

_____

X 13. Law enforcement agencies with jurisdiction over the protected locations shall have authority to compel Respondent's compliance with this Order, including the authority to forcibly evict and restrain Respondent from the protected areas. Information to assist with identification of the Respondent is attached to the Appendix to this Order.

X 14. Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1976, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States Territories.

15. Three years after the date of this order, a hearing may be held to dismiss the remaining provisions of the order. Within 30 days prior to the end of the three-year period, the Petitioner should provide the court with a current address, which address will not be made available to Respondent.

DATED: May 25, 1999

BY THE COURT:

William W. Barrett

DISTRICT COURT JUDGE

CERTIFY THAT THIS IS A TRUE COPY
OF AN ORIGINAL DOCUMENT ON FILE
IN THE THIRD DISTRICT COURT SALT
LAKE COUNTY STATE OF UTAH
DATE June 4 01

DEPUTY COURT CLERK

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE CITY

Recommended by:

_____ 1-5-09
District Court Commissioner Date

By this signature, Respondent approves the form, and accepts service, of this Protective Order and waives the right to be personally served.

_____
Respondent

Serve Respondent at:
6995 S. Benton Dr. 84121
_____
_____

Addendum D

American Bar Association
Commission on Domestic Violence

PREVALENCE

Domestic violence crosses ethnic, racial, age, national origin, sexual orientation, religious and socioeconomic lines.

- by the most conservative estimate, each year 1 million women suffer nonfatal violence by an intimate.
  Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 3.

- by other estimates, 4 million American women experience a serious assault by an intimate partner during an average 12-month period.
  Amercan Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.

- nearly 1 in 3 adult women experience at least one physical assault by a partner during adulthood.
  Amercan Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.

- 28% of all annual violence against women is perpetrated by intimates.
  Bureau of Justice Statistics Special Report: National Crime Victimization Survey, Violence Against Women (NCJ-145325), January 1994.

- 5% of all annual violence against men is perpetrated by intimates.
  Bureau of Justice Statistics Special Report: National Crime Victimization Survey, Violence Against Women (NCJ-145325), January 1994.

- during 1994, 21% of all violent victimizations against women were committed by an intimate, but only 4% of violent victimizations against men were committed by an intimate.
  Bureau of Justice Statistics Special Report: Sex Differences in Violent Victimization, 1994 (NCJ-164508), September, 1997, pp. 1-3.

- in 1993, approximately 575,000 men were arrested for committing violence against women. approximately 49,000 women were arrested for committing violence against men.
  Amercan Psychl. Ass'n, Violence and the Family: Report of the Amercan Psychological Association Presidential Task Force on Violence and the Family (1996), p 10

RACE

Race is not indicative of who is at risk of domestic violence.

- domestic violence is statistically consistent across racial and ethnic boundaries.
  Bureau of Justice Statistics Special Report: Violence Against Women. Estimates from the Redesigned Survey (NCJ-154348), August 1995, p 3

AGE

Batterers and victims may experience domestic violence at any age.

- women ages 19-29 reported more violence by intimates than any other age group
  Bureau of Justice Statistics Special Report Violence Against Women Estimates from the Redesigned Survey (NCJ-154348) August 1995 p 4

- women aged 46 or older are least likely to be battered by an intimate
  Bureau of Justice Statistics Special Report Violence Against Women Estimates from the Redesigned Survey (NCJ-154348), August 1995 p 4

- in a 1990 restraining order study, the age of abusers ranged from 17 - 70. two-thirds of the abusers were between the ages 24 and 40.
  Buzawa & Buzawa ed , Do Arrests and Restraining Orders Work? (1996), p 195

GENDER

An overwhelming majority of domestic violence victims in heterosexual relationships are women.

- 90 - 95% of domestic violence victims are women.
  Bureau of Justice Statistics Selected Findings Violence Between Intimates (NCJ-149259), November 1994

- as many as 95% of domestic violence perpetrators are male.
  A Report of the Violence against Women Research Strategic Planning Workshop sponsored by the National Institute of Justice in cooperation with the U S Department of Health and Human Services, 1995

- much of female violence is committed in self-defense, and inflicts less injury than male violence
  Chalk & King, eds Violence in Families Assessing Prevention & Treatment Programs, National Resource Council and Institute of Medicine, p 42 (1998)

- during 1992-1993, women were 6 times more likely to experience violence by an intimate partner than men.
  Bureau of Justice Statistics Special Report Violence Against Women Estimates from the Redesigned Survey (NCJ-154348), August 1995, p 1

- the chance of being victimized by an intimate is 10 times greater for a woman than a man
  Bureau of Justice Statistics Special Report. National Crime Victimization Survey, Violence Against Women, 1994

- 70% of intimate homicide victims are female
  Bureau of Justice Statistics Selected Findings Violence Between Intimates (NCJ-149259), November 1994

- male perpetrators are 4 times more likely to use lethal violence than females
  Florida Governor's Task Force on Domestic and Sexual Violence Florida Mortality Review Project, 1997 p 44 table 7

SAME-SEX BATTERING

Domestic violence occurs within same-sex relationships with the same statistical frequency as in heterosexual relationships.

- the prevalence of domestic violence among Gay and Lesbian couples is

approximately 25 - 33%
Barnes It s Just a Quarrel' American Bar Association Journal, February 1998 p 25

- battering among Lesbians crosses age, race, class, lifestyle and socio-economic lines
  Lobel ed Naming the Violence Speaking Out About Lesbian Battering 183 (1986)

- each year, between 50,000 and 100,000 Lesbian women and as many as 500,000 Gay men are battered
  Murphy Queer Justice Equal Protection for Victims of Same-Sex Domestic Violence, 30 Val U L Rev 335 (1995)

- while same-sex battering mirrors heterosexual battering both in type and prevalence, its victims receive fewer protections
  Barnes, It's Just a Quarrel' American Bar Association Journal, February 1998, p 24

- seven states define domestic violence in a way that excludes same-sex victims; 21 states have sodomy laws that may require same-sex victims to confess to a crime in order to prove they are in a domestic relationship.
  Barnes, It's Just a Quarrel', American Bar Association Journal, February 1998, p 24

- many battered Gays or Lesbians fight back to defend themselves - it is a myth that same-sex battering is mutual.
  Murphy, Queer Justice Equal Protection for Victims of Same-Sex Domestic Violence, 30 Val U L Rev 335 (1995)

- by 1994, there were over 1,500 shelters and safe houses for battered women many of these shelters routinely deny their services to victims of same-sex battering.
  Murphy Queer Justice Equal Protection for Victims of Same-Sex Domestic Violence, 30 Val U L Rev 335 (1995)

- same-sex batterers use forms of abuse similar to those of heterosexual batterers. they have an additional weapon in the threat of "outing" their partner to family, friends, employers or community.
  Lundy, Abuse That Dare Not Speak Its Name Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts, 28 New Eng L Rev 273 (Winter 1993)

BATTERED IMMIGRANT WOMEN

Battered immigrant women face unique legal, social and economic problems.

- domestic violence is thought to be more prevalent among immigrant women than among U S. citizens.
  Anderson, A License to Abuse. The Impact of Conditional Status on Female Immigrants, 102 Yale L J 1401 (April 1993)

- immigrant women may suffer higher rates of battering than U S citizens because they come from cultures which accept domestic violence, or because they have less access to legal and social services than U S citizens in addition, immigrant batterers and victims may believe that the penalties and protections of the U S legal system do not apply to them.
  Orloff et al With No Place to Turn Improving Advocacy for Battered Immigrant Women, Family Law Quarterly, vol 29 no 2 313 (Summer 1995)

- a battered woman who is not a legal resident, or whose immigration status depends on her partner, is isolated by cultural dynamics which may prevent her from leaving her husband or seeking assistance from the legal system these factors contribute to the higher incidence of abuse among immigrant women
  Orloff et al With No Place to Turn Improving Advocacy for Battered Immigrant Women, Family Law Quarterly vol 29 no 2 313 (Summer 1995)

- some obstacles faced by battered immigrant women include a distrust of the legal system arising from their experiences with the system in their native countries, cultural and language barriers, and fear of deportation
  Orloff et al With No Place to Turn Improving Advocacy for Battered Immigrant Women Family Law Quarterly vol 29 no 2, 313 (Summer 1995)

- a battered immigrant woman may not understand that she can personally tell her story in court, or that a judge will believe her based on her experience in her native country, she may believe that only those who are wealthy or have ties to the government will prevail in court batterers often manipulate these beliefs by convincing the victim he will prevail in court because he is a male, a citizen or that he has more money
  Orloff et al With No Place to Turn Improving Advocacy for Battered Immigrant Women Family Law Quarterly, vol 29 no 2 313 (Summer 1995)

- although a victim may be in the country legally by virtue of her marriage to the batterer, their status may be conditional; in this situation it is common for a batterer to exert his control over his wife's immigration status in order to force her to remain in the relationship
  Jang, Caught in a Web Immigrant Women and Domestic Violence, National Clearinghouse (Special Issue 1994), p 400

- undocumented women may be reported to Immigration and Naturalization Services by law enforcement or social services personnel from whom they may seek assistance
  Jang, Caught in a Web Immigrant Women and Domestic Violence, National Clearinghouse (Special Issue 1994), p 397-399

- a battered immigrant woman is often trapped in an abusive relationship by economics she may have legal or practical impediments to obtaining employment or public assistance
  Jang, Caught in a Web Immigrant Women and Domestic Violence, National Clearinghouse (Special Issue 1994) p 403

- batterered immigrant women who attempt to flee may have no access to bilingual shelters, financial assistance or food it is unlikely that she will have the assistance of a certified interpreter in court, when reporting complaints to police or a 911 operator, or even in acquiring information about her rights and the legal system.
  Orloff et al With No Place to Turn Improving Advocacy for Battered Immigrant Women, Family Law Quarterly, vol 29 no 2 313 (Summer 1995)

WELFARE RECIPIENTS

Domestic violence may affect a woman's ability to financially support herself and her children.

- past and current victims of domestic violence are over-represented in the welfare population. the majority of welfare recipients have experienced domestic abuse in their adult lives, and a high percentage are currently abused
  Raphael & Tolman, Trapped by Poverty, Trapped by Abuse New Evidence Documenting the Relationship Between Domestic Violence and Welfare , p 20 (1997)

- abused (past or current) welfare recipients experience higher levels of health or mental health problems such as a physical disability, or serious or acute depression
  Raphael & Tolman Trapped by Poverty Trapped by Abuse New Evidence Documenting the Relationship Between Domestic Violence and Welfare p 21 (1997)

- 15 - 50% of abused women report interference from their partner with education training or work
  Raphael & Tolman Trapped by Poverty Trapped by Abuse New Evidence Documenting the Relationship Between Domestic Violence and Welfare p 22 (1997)

- welfare studies show that abused women do seek employment, but are unable to maintain it it is possible that domestic violence presents a barrier to sustained labor market participation
  Raphael & Tolman Trapped by Poverty Trapped by Abuse New Evidence Documenting the Relationship Between Domestic Violence and Welfare p 22 (1997)

- examples of abusers' sabotage of their victims' attempts to work include calling her employer and ordering the victim to quit, making allegations requiring the victim to appear before the police, court or social services, threatening to kill the victim, committing suicide in front of the victim, sabotaging the victim's car, beating her up on the way to an interview, stealing her work uniforms, starting fights each day before school or work, breaking the victim's writing arm repeatedly, manipulating her schedule by demanding visitation with the children, stalking, starting fights or threatening abuse which affects her ability to concentrate at work, or encouraging continued drug addition
  Raphael & Tolman Trapped by Poverty Trapped by Abuse New Evidence Documenting the Relationship Between Domestic Violence and Welfare pp 10-14 (1997)

- between one- and two-thirds of welfare recipients reported having suffered domestic violence at some point in their adult lives, between 15 - 32% reported current domestic victimization.
  Raphael & Tolman, Trapped by Poverty Trapped by Abuse New Evidence Documenting the Relationship Between Domestic Violence and Welfare p 21 (1997)

RECIDIVISM

Battering tends to be a pattern of violence rather than a one-time occurrence.

- during the six months following an episode of domestic violence, 32% of battered women are victimized again
  Bureau of Justice Statistics Preventing Domestic Violence Against Women, 1986

- 47% of men who beat their wives do so at least 3 times per year
  AMA Diagnostic & Treatment Guidelines on Domestic Violence, SEC 94-677 3M 9/94 (1994)

- short term (6-12 week) psycho-educational batterer-intervention programs helped some batterers stop immediate physical violence but were inadequate in stopping abuse over time some batterers became more sophisticated in their psychological abuse and intimidation after attending such programs
  American Psychl Ass'n Violence and the Family Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p 85

- six months after obtaining a protection order 8% of victims reported post-order physical abuse; 26% reported respondent came to or called their home or workplace, 65% reported no further problems
  CPOs the Benefits and Limitations for Victims of Domestic Violence National Center for State Courts Research Report, 1997

CHILDREN

Domestic violence has immediate and long term detrimental effects on children.

- each year, an estimated 3 3 million children are exposed to violence by family members against their mothers or female caretakers
  American Psychl Ass n Violence and the Family Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996) p 11

- In homes where partner abuse occurs, children are 1,500 times more likely to be abused.
  Department of Justice, Bureau of Justice Assistance, Family Violence Interventions for the Justice System, 1993

- 40-60% of men who abuse women also abuse children.
  American Psychl Ass'n, Violence and the Family Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p 80

- fathers who batter mothers are 2 times more likely to seek sole physical custody of their children than are non-violent fathers.
  American Psychl Ass'n, Violence and the Family Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 40.

- in one study, 27% of domestic homicide victims were children.
  Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p. 45, table 11

- when children are killed during a domestic dispute, 90% are under age 10; 56% are under age 2.
  Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.51, table 28

DATING VIOLENCE

Violence against intimates may occur even though the victim does not live with her abuser.

- violence against women occurs in 20% of dating couples.
  American Psychl Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.

- an average of 28% of high school and college students experience dating violence at some point.
  Brustin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol 29, no 2, 331 (Summer 1995) (citing Levy, In Love & In Danger: a teen's guide to breaking free of an abusive relationship, 1993).

- 26% of pregnant teens reported being physically abused by their boyfriends. about half of them said the battering began or intensified after he learned of her pregnancy.
  Brustin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol 29, no 2, 333-334 (Summer 1995) (citing Worcester, A More Hidden Crime: Adolescent Battered Women, The Network News, July/Aug., national Women's Health Network 1993).

- victims of dating violence report the abuse takes many forms: insults, humiliation, monitoring the victim's movements, isolation of the victim from family and friends, suicide threats, threats to harm family or property, and physical or sexual abuse. their abusers also blamed them for the abuse, or used jealousy as an excuse.
  Brustin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol 29, no 2, 336 (Summer 1995) (citing Gamache, Domination and Control: The Social Context of Dating Violence, in Dating Violence, Young Women in Danger, Levy, ed. 1991).

- 25 - 33% of adolescent abusers reported that their violence served to "intimidate," frighten," or "force the other person to give me something."
  Brustin, S., Legal Response to Teen Dating Violence, Family Law Quarterly, vol 29, no 2, 335 (Summer 1995).

SELF-DEFENSE

Many battered women attempt to physically defend themselves

from abuse.

- marital homicide differs significantly by gender a large proportion of the killings by women are acts of self-defense, while almost none of the killings by men are acts of self-defense.
  Florida Governor's Task Force on Domestic and Sexual Violence Florida Mortality Review Project Executive Summary 1997

- defensive action by battered women to protect themselves or their children is often interpreted by law enforcement as an act of domestic violence the number of battered women arrested for committing acts of violence against their partners has disproportionately increased in communities that overuse "dual arrest "
  Promising Practices Initiatives Report on the Expert Panels on Domestic Violence, Sexual Assault and Stalking Technical Assistance Project, U S Department of Justice, 1997

PHYSICAL INJURY AND MEDICAL TREATMENT

Victims of domestic violence often require medical care, although they may conceal the cause of their injuries.

- female victims of violence are 2 5 times more likely to be injured when the violence is committed by an intimate than when committed by a stranger.
  Bureau of Justice Statistics Special Report Violence Against Women Estimates from the Redesigned Survey (NCJ-154348), August 1995, p 4

- because domestic abuse is an ongoing cycle producing increasingly severe injuries over time, battered women are likely to see physicians frequently
  Children's Safety Network, Domestic Violence A Directory of Protocols for Health Care Providers (1992) p (I)

- the rate of domestic violence detection by emergency room doctors is low
  Abbott et al , Domestic Violence Against Women Incidence and Prevalence in an Emergency Department Population, Journal of the American Medical Association, vol 273, no 22, 1763, 1766 (June 1995)

- although battered women comprise 20 - 30% of ambulatory care patients, only 1 in 20 is correctly identified as such by medical practitioners.
  Hyman et al , Laws Mandating Reporting of Domestic Violence Do They Promote Patient Well-Being?, Journal of the American Medical Association, vol 273, no 22, 1781 (June 1995)

- one study found that less than 3% of women visiting emergency rooms disclosed or were asked about domestic violence by a nurse or physician
  Abbott et al Domestic Violence Against Women Incidence and Prevalence in an Emergency Department Population, Journal of the American Medical Association, vol 273 no 22, 1763, 1765 (June 1995)

- the use of emergency room protocols for identifying and treating victims of domestic violence has been found to increase the identification of victims by medical practitioners from 5 6% to 30%.
  Children's Safety Network, Domestic Violence A Directory of Protocols for Health Care Providers (1992) p (I)

- 17% of those who visit emergency rooms for treatment are documented as having come as a result of being injured by an intimate
  Bureau of Justice Statistics Violence-Related Injuries Treated in Hospital Emergency Departments (NCJ-156921) August 1997 p 5

- 37% of women injured by violence and treated in an emergency room were injured by an intimate, less than 5% of men injured by violence and treated in an emergency room were injured by an intimate
  Bureau of Justice Statistics Violence-Related Injuries Treated in Hospital Emergency Departments (NCJ-156921) August 1997 p 5

- 243,000 people receiving emergency room treatment for violence-related injuries in 1994 had been injured by an intimate. female victims outnumbered males 9 to 1.
  Bureau of Justice Statistics Violence-Related Injuries Treated in Hospital Emergency Departments (NCJ-156921), August 1997 p 5.

- "acute domestic violence" was the reason for 1 out of 9 patients emergency room visit among women with a current partner.
  Abbott et al , Domestic Violence Against Women Incidence and Prevalence in an Emergency Department Population, Journal of the American Medical Association, vol 273, no 22, 1763, 1765 (June 1995).

- one study of women visiting emergency rooms for treatment found that 54% had been threatened or injured by an intimate partner at some time in their lives, and 24% reported having been injured by their current partner in the past.
  Abbott et al., Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population, Journal of the American Medical Association, vol. 273, no 22, 1763, 1765 (June 1995).

LAW ENFORCEMENT

Intervention of the police and the court system can be improved in domestic violence cases.

- every state allows its police to arrest perpetrators of misdemeanor domestic violence incidents upon probable cause, and more than half of the states and the district of columbia havelaws requiring police to arrest on probable cause for at least some domestic violence crimes.
  Zorza, Mandatory Arrest for Domestic Violence: Why it may prove the best first step in curbing repeat abuse, Criminal Justice, vol. 10, no. 3, p. 66 (Fall 1995).

- only about one-seventh of all domestic assaults come to the attention of the police.
  Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p. 3.

- female victims of domestic violence are 6 times less likely to report crime to law enforcement as female victims of stranger violence.
  American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p 10.

- when an injury was inflicted upon a woman by her intimate partner, she reported the violence to the police only 55% of the time. she was even less likely to report violence when she did not sustain injury.
  Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 5.

- some studies indicate that arresting a batterer increases recidivism, while some studies indicate that arrest serves as a deterrent for future domestic violence.
  Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 46 (1996).

- arresting a batterer may reduce violence in the short term, but may increase violence in the long term.
  Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p 43, 49 (1996).

- the varying effect of arrest on abusers may be related to the amount the batterer has to lose from facing the social consequences of arrest. the single most consistent result of studies of the effect of arrest on batterers is that unemployed suspects become more violent after an arrest, and employed suspects do not.
  Buzawa & Buzawa ed , Do Arrests and Restraining Orders Work? pp 48-49 (1996).

- even if arrest may not deter unemployed abusers, arrest still deters the vast majority of abusers.
  Zorza, The Criminal Law of Misdemeanor Domestic Violence, 1970-1990 The Journal of Criminal Law & Criminology (Northwestern School of Law), vol 83, no 1, p 66 (1992)

- possession of a gun by anyone subject to a protection order is prohibited by federal law.
  The Violent Crime Control and Law Enforcement Act of 1994, 18 U S C 922(g)(8)

- purchase or ownership of a gun by anyone convicted of a misdemeanor domestic violence offense is prohibited by federal law.
  Domestic Violence Offenders Gun Ban (1996), 18 U S C 922(g)(9)

PROTECTION ORDERS

Protection orders decrease, but do not eliminate, the risk of continuing abuse or homicide.

- a protection order issued by one U.S. state or indian tribe is valid and enforceable in any other U.S. state or Indian tribe.
  Violence Against Women Act of 1994, 18 U S C 2265.

- in cases of marital or dating violence, which accounted for 82% of all protection order cases, 90% of defendants were male.
  Adams & Powell, Tragedies of Domestic Violence A qualitative analysis of civil restraining orders in Massachusetts, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 9 (1995).

- 35% of women with temporary protection orders did not return for a protection order because respondent stopped battering her; 17% because service of process was not achieved.
  CPOs· the Benefits and Limitations for Victims of Domestic Violence, National Center for State Courts Research Report, 1997

- more than 17% of domestic homicide victims had a protection order against the perpetrator at the time of the killing.
  Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p 46, table 15.

- although the majority of batterers do not have criminal records, the majority of batterers brought to court by their victims for a protection order had criminal records.
  Buzawa & Buzawa ed , Do Arrests and Restraining Orders Work? p 10 (1996).

- protection order defendants who had prior criminal histories were more likely to violate the order than those who did not.
  Adams & Powell, Tragedies of Domestic Violence: A Qualitative Analysis of Civil Restraining Orders in Massachusetts, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 17 (1995).

- in one study, nearly half of the victims who obtained a protection order were re-abused within two years.
  Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p. 10 (1996).

- the majority of women who seek temporary protection orders have complaints of serious abuse: physical assaults, threats to kill or harm her, or attempts or threats to take the children.
  Buzawa & Buzawa ed., Do Arrests and Restraining Orders Work? p 216 (1996).

- in one study of women seeking temporary protection orders, 56% has sustained physical injuries.
  Buzawa & Buzawa ed , Do Arrests and Restraining Orders Work? p 216 (1996).

- 60% of women in one study reported acts of abuse after the entry of a protection order, and 30% reported acts of severe violence.
  Buzawa & Buzawa ed , Do Arrests and Restraining Orders Work? p 223 (1996).

- entry of a protection order did not appear to deter most types of abuse, but it did

significantly reduce the likelihood of acts of psychological abuse such as preventing the victim from leaving her home, going to work, using a car or telephone, and stalking and harassing behaviors.
Buzawa & Buzawa ed , Do Arrests and Restraining Orders Work? p 228-229 (1996)

- one study showed 80% of women with temporary protection order said the order was somewhat or very helpful in sending the batterer a message that his actions were wrong. less than 50% of the women thought that the batterer believed he had to obey the order
Buzawa & Buzawa ed , Do Arrests and Restraining Orders Work? p 218 (1996)

- most violations of protection orders leading to an arrest occurred within 90 days of the entry of the order.
Buzawa & Buzawa ed , Do Arrests and Restraining Orders Work? p 200 (1996)

- 60% of those obtaining protection orders in one study reported violations within one year.
Buzawa & Buzawa ed , Do Arrests and Restraining Orders Work? p 240 (1996).

- calls to police due to violations of protection orders were high, but the arrests were rare.
Buzawa & Buzawa ed , Do Arrests and Restraining Orders Work? p 239 (1996).

- 17% of protection orders defendants in a 1995 study were arraigned for a violation of the order within one year.
Adams & Powell, Tragedies of Domestic Violence A Qualitative Analysis of Civil Restraining Orders in Massachusetts, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 15 (1995).<

- 6% of protection order defendants were convicted of violating the order.
Adams & Powell, Tragedies of Domestic Violence· A Qualitative Analysis of Civil Restraining Orders in Massachusetts, Office of the Commissioner of Probation Massachusetts Trial Court, p. 17 (1995).

STALKING

Batterers may attempt to frighten or control their victims through stalking.

- some advocates believe up to 80% of stalking cases occur within intimate relationships.
Domestic Violence, Stalking and Anti-Stalking Legislation, an Annual Report to Congress under the Violence Against Women Act, National Institute of Justice Research, April 1996, p 3

- if stalking occurs within an intimate relationship, it typically begins after the woman attempts to leave the relationship.
Domestic Violence, Stalking and Anti-Stalking Legislation, an Annual Report to Congress under the Violence Against Women Act, National Institute of Justice Research, April 1996, p 1

SEPARATION VIOLENCE

When a woman leaves her batterer, her risk of serious violence or death increases dramatically.

- separated/divorced women are 14 times more likely than married women to report having been a victim of violence by their spouse or ex-spouse.
Bureau of Justice Statistics Female Victims of Violent Crime 1991

- women separated from their husbands were 3 times more likely to be victimized by spouses than divorced women, and 25 times more likely to be victimized by spouses

than married women.
Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 4.

- 65% of intimate homicide victims physically separated from the perpetrator prior to their death.
Florida Governor's Task Force on Domestic and Sexual Violence. Florida Mortality Review Project, 1997, p.47, table 17.

HOMICIDE

Domestic homicide is often the culmination of an escalating history of abuse.

- female homicide victims are more than twice as likely to have been killed by an intimate partner than are male homicide victims.
Bureau of Justice Statistics: Female Victims of Violent Crime, December, 1996.

- 88% of victims domestic violence fatalities had a documented history of physical abuse.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, pp.46-48, tables 14-21.

- 44% of victims of intimate homicides had prior threats by the killer to kill victim or self. 30% had prior police calls to the residence. 17% had a protection order.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, pp.46-48, tables 14-21.

- for homicides in which the victim-killer relationship was known, 31% of female victims were killed by an intimate. 4% of male victims were killed by an intimate.
Bureau of Justice Statistics Special Report: Sex Differences in Violent Victimization, 1994 (NCJ-164508), September, 1997, p. 1.

- 70% of intimate-partner homicide victims are women.
Bureau of Justice Statistics Selected Findings: Violence Between Intimates (NCJ-149259) November, 1994.

- a woman is the perpetrator in 19% of domestic homicides.
Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.44, table 7.

- when a woman is the perpetrator of a domestic homicide, typically the abuser was killed during an assaultive incident in which the woman was the victim.
Browne, When Battered Women Kill, pp. 135-137 (1987).

- in a 1967 study, 60% of husbands who were killed by their wives precipitated their own deaths by being the first to use physical force or threaten with a weapon.
Browne, When Battered Women Kill, p. 10 (1987).

- homicides committed by victims during a battering incident were often committed with the abuser's own weapon.
Browne, When Battered Women Kill, p. 140 (1987).

- a 1978 study found that almost all of the wives who had killed their husbands had previously been beaten by their husbands.
Browne, When Battered Women Kill, p. 10 (1987).

- of women killed in 1992, their relationship to the killer was known in 69% of homicides. of this percent, 28% were killed by spouse, ex-spouse, boyfriend or ex-boyfriend.
Bureau of Justice Statistics: National Crime Victimization Survey, 1995.

- of men killed in 1992, their relationship to the killer was known in 59% of homicides. of this percent, 3% were killed by spouse, ex-spouse, girlfriend or ex-girlfriend.
  Bureau of Justice Statistics National Crime Victimization Survey, 1995

MULTIPLE-VICTIM HOMICIDE

In some domestic homicides, the perpetrator kills more than one person.

- in 1994, 38% of domestic homicides were multiple-victim, usually combining a spouse homicide and suicide, or child homicide.
  Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.45, table 12.

- where there are multiple victims in a domestic homicide, 89% of perpetrators are male.
  Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.52, table 29.